

**Escrow Agreement
Noncritical,
Deferred Repairs**

**U.S. Department of Housing
and Urban Development**
Office of Housing

OMB Approval No. 0000-0000 **For**
(exp. 00/00/00)

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This Agreement is effective as of the _____ day of _____, between
_____, Lender, and
_____, Borrower.

The terms Lender and Borrower shall be deemed to have the meaning set forth in the HUD regulatory agreement for this transaction.

Borrower has acquired or refinanced a housing project or health care facility identified as HUD Project Number _____, with the proceeds of a loan (the Mortgage Loan) from Lender. The United States Department of Housing and Urban Development (HUD) has endorsed and insured the Mortgage Loan pursuant to § _____ of the National Housing Act, as amended, the regulations and the directives issued pursuant thereto.

Initial/final endorsement is conditioned upon assurance that funds be available for non-critical repairs deferred until after endorsement of the Mortgage Loan, where repairs are to be completed using mortgage proceeds. Funds deposited with Lender are to be held by Lender under the Contract of Mortgage Insurance for and on behalf of Borrower.

The non-critical, deferred repair cost estimate and list of repairs itemized on Exhibit A are attached to and made part of this Agreement. Borrower agrees to establish an escrow with Lender equal to at least 150 percent of the estimated cost of the repairs.

In consideration of the premises, the parties acknowledge and agree as follows:

1. Cash in the amount of \$_____ has been withheld from the mortgage proceeds. A letter of credit may not be substituted for this 100% escrow.
2. An additional cash amount (or letter of credit, at option of Lender) of not less than 50% of the repair cost estimate is hereby placed in escrow, in the amount of \$_____.
3. Lender may release funds from the mortgage proceeds portion of the escrow in proportion to the cost of work completed, less a 10 percent holdback. The holdback amount must be held until all work is completed and found acceptable.

4. Funds remaining in the escrow account, including the holdback portion, together with interest, may be released to Borrower when: (a) all repairs have been satisfactorily completed, (b) evidence of clear title has been provided to the field office, and (c) latent defect assurances have been provided by one of the following: (i) an escrow in cash, or letter of credit at the option of Lender equal to 2 ½ percent, or greater as warranted, of the repair cost maintained for 15 months from completion of repairs to cover situations where the defect is discovered in the twelfth month and additional time is necessary to correct it or (ii) a Surety Bond covered by FHA form 3259 from a surety on the accredited list of the U.S. Treasury for at least 10 percent of the repair cost. The bond runs from the date of completion of repairs.

5. All non-critical deferred repairs must be completed by Borrower within twelve (12) months of endorsement, or such shorter period as HUD and Lender may specify. If Borrower has not completed all repairs by the end of the repair period, including any approved extensions, Lender will complete the repairs using the escrowed funds. For this purpose, Borrower irrevocably appoints Lender as its attorney-in-fact. Lender will provide Borrower with a breakdown of these repairs and the cost of completion, including administrative expenses. Funds remaining in the escrow account after completion of the repair work will be returned to Borrower less reasonable administrative costs incurred in completing the repairs.

6. In cases where actual costs are less than estimated, the maximum insurable loan amount must be recalculated. If the maximum insurable mortgage is reduced due to lower actual costs, the mortgagor must prepay the mortgage: (1) in amounts equal to the scheduled monthly principal payments, to the extent possible; with (2) any remainder going to the Reserve for Replacements Fund.

7. In the event Borrower defaults under the Mortgage Loan, the remaining balance in the repair escrow is to be applied to the obligations of Borrower or to the Mortgage Loan, as directed by HUD.

8. If any amount deposited under this Agreement is in the form of a letter of credit, the letter of credit was issued to Lender by a banking institution, and is unconditional and irrevocable. Lender is not the issuer thereof unless HUD has granted prior written consent. Lender will be responsible to HUD for collection under any letter of credit. In the event a demand for payment under the letter of credit is not immediately met, Lender will immediately provide a cash deposit equivalent to the undrawn balance of the letter of credit.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

BORROWER:

By: _____

Print name and title

LENDER:

By: _____

Print name and title

Warning

Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a manner within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. §§ 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. § 3729; and (iii) administrative sanctions, claims and penalties under 24 C.F.R. Parts 24 and 28.